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1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 08-13555-scc

4 - x

5 In the Matter of:

6

7 LEHMAN BROTHERS HOLDINGS INC.,

8 Debtor.

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12

13 U.S. Bankruptcy Court
14 One Bowling Green
15 New York, New York

16

17 December 17, 2015

18 10:02 AM

19

20 B E F O R E:

21 HON. SHELLEY C. CHAPMAN

22 U.S. BANKRUPTCY JUDGE

23

24

25 ECRO - F. FERGUSON

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1 HEARING Re: Doc #51263 Motion for Order Compelling
2 Arbitration of Disputes Under Settlement Agreement Between
3 Debtors and Arch Insurance Company

4

5 HEARING Re: Doc #20102 Debtors' Two Hundred Thirteenth
6 Omnibus Objection to Disallow and Expunge Certain Filed
7 Proofs of Claim

8

9 HEARING Re: Doc #20103 Debtors' Two Hundred Fourteenth
10 Omnibus Objection to Disallow and Expunge Certain filed
11 Proofs of Claim

12

13 HEARING Re: Doc #20104 Debtors' Two Hundred Fifteenth
14 Omnibus Objection to Disallow and Expunge Certain Filed
15 Proofs of Claim

16

17 HEARING Re: Doc #20105 Debtors' Two Hundred Sixteenth
18 Omnibus Objection to Disallow and Expunge Certain Filed
19 Proofs of Claim

20

21 HEARING Re: Doc #32652 Three Hundred Seventy-Ninth Omnibus
22 Objection to Claims (Subordinated Guarantee Claims)

23

24

25 Transcribed by: Sheila Orms

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1 P R O C E E D I N G S

2 THE COURT: All right. How is everyone today?

3 MR. MARGOLIN: Good morning, Your Honor, Jeffrey
4 Margolin, Hughes Hubbard & Reed for Mr. Giddens, the SIPA
5 Trustee.

6 Your Honor, originally we had one contested matter
7 on the calendar --

8 THE COURT: Right.

9 MR. MARGOLIN: -- which a notice of presentment in
10 connection with the Trustee's 263rd omnibus objection. Late
11 yesterday we resolved that with the Chicago Board --

12 THE COURT: Okay.

13 MR. MARGOLIN: -- as reflected in the amended
14 agenda filed late last night, it was removed from the
15 calendar and the notice of presentment is withdrawn. We
16 just wanted to put on the record for you today.

17 THE COURT: Right.

18 MR. MARGOLIN: We have no other matters on the
19 calendar. I wish you a Happy New Year --

20 THE COURT: Same to you.

21 MR. MARGOLIN: -- and we'll see you in 2016.

22 THE COURT: See you in 2016. Very good.

23 MR. MARGOLIN: If I may be excused?

24 THE COURT: Yes, please, thank you.

25 MR. MARGOLIN: Thank you.

1 THE COURT: All right. Mr. Fail.

2 MR. FAIL: I believe there's one matter on first.

3 THE COURT: Mr. Ziehl, how are you?

4 MR. ZIEHL: Fine. Yes, good morning, Your Honor.

5 THE COURT: Good morning.

6 MR. ZIEHL: Dean Ziehl appearing for Lehman
7 Brothers Holdings Inc., LCPI, Lehman (indiscernible) Inc.
8 and LV Ritter Ranch (ph) on matter number 1.

9 THE COURT: Good morning.

10 MR. SHAHINIAN: Good morning, Armen Shahinian from
11 Chiesa Shahinian & Giantomasi appearing for Arch Insurance
12 Company and with me is Ron Hopkins of the Gascou Hopkins
13 firm in California.

14 THE COURT: Okay. Very good. Welcome.

15 All right. Mr. Ziehl, do you want to start off?

16 MR. ZIEHL: Good morning, Your Honor.

17 THE COURT: Needless to say I've read everything
18 that you submitted.

19 MR. ZIEHL: I assumed so. I can give you just a
20 little bit of background.

21 THE COURT: Sure.

22 MR. ZIEHL: The underlying dispute has to do with
23 the performance, interpretation, enforcement of an agreement
24 between Arch Insurance Company and the Lehman entities,
25 which has been referred to as the Arch Lehman settlements,

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1 specifically the enforcement of the arbitration clause in
2 that agreement.

3 That agreement was actually reached in September
4 of 2011, at JAM's (ph) office in New York with Judge
5 Weinstein. It started -- the mediation started in
6 California but was actually, the agreement was concluded
7 here in New York.

8 This Court, predecessor court approved the order
9 of October of 2011 pursuant to 363 and 9019. Under -- the
10 settlement was broader than this particular project. It was
11 a global settlement, involved a number of disputes and
12 litigation between Arch, involving Arch, which was the
13 surety bond and performance bond company --

14 THE COURT: Right.

15 MR. ZIEHL: -- on a number of these large
16 subdivision projects in California.

17 The pending motion deals just with the Ritter
18 Ranch property --

19 THE COURT: Right.

20 MR. ZIEHL: -- which is in excess of 10,000 acres,
21 it's in Palmdale, California. The -- in its most basic, the
22 agreement required Arch to perform various work under its
23 bond on the Ritter Ranch project, including specifically on
24 Elizabeth Lake Road, and that's why the agreement with the
25 city is called the ELR agreement, and it had to do with

1 electrical work on that road.

2 And the work that they were obligated to perform
3 was described in an agreement it had with the settlement
4 agreement with the City which was attached as an exhibit to
5 the agreement, as to what its obligations were to Lehman,
6 and that was an attachment that was part of the package that
7 was approved by the Court.

8 Lehman was under -- had negotiated a cap on how
9 much it was going to be required to reimburse Arch for at
10 \$1.1 million under that agreement, and then it had to secure
11 payment with two forms of collateral, an escrow account, and
12 also a deed of trust on the project.

13 To no surprise subsequently with this type of
14 development, there were delays and cost overruns. Lehman
15 paid Arch the full cap amount, and Arch didn't finish all
16 the work that was required under the underlying agreement.
17 Arch refuses to release the Lehman collateral, even though
18 under the terms of the agreement, we believe that they're
19 required to do so.

20 So Lehman sent the arbitration notice, which was
21 to be, as you can see from the provision, an expedited way
22 to quickly resolve these types of disputes within a very
23 short period of time to Judge Weinstein, who had been the
24 mediator and agreed to be the arbitrator, so he had
25 familiarity, and to be administered by JAMS.

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1 And the two issues were presented, whether Arch
2 was obligated to release the collateral, and then whether
3 Arch's denial of financial responsibility to complete that
4 work in excess of the camp, could be essentially foisted off
5 on Lehman Brothers who will be stuck with it, in order to
6 get the subdivision approval process.

7 Arch --

8 THE COURT: A moment, Mr. Ziehl.

9 MR. ZIEHL: Yes.

10 THE COURT: Could I ask whoever is on the phone on
11 a live line, please put your line on mute. Thank you. Yes?
12 Ma'am? You're -- operator, ma'am, you need to put your line
13 on mute or you will be disconnected.

14 MS. ROOY: The (indiscernible) so I'm trying to
15 (indiscernible). Do you hear me?

16 THE COURT: Yes, ma'am.

17 MS. ROOY: Hello?

18 THE COURT: You've been connected in connection
19 with a matter in the Lehman case, correct?

20 MS. ROOY: Yes, that's correct.

21 THE COURT: All right. Is this Ms. Rooy?

22 MS. ROOY: Yes, I'm (indiscernible).

23 THE COURT: Okay. Very well. Your matter is not
24 being heard right now. I'm hearing another matter. This is
25 the Judge speaking --

1 MS. ROOY: Yes, thank you very much, this is
2 (indiscernible).

3 THE COURT: I'm going to ask you to put your line
4 on mute, so that no noise comes into the courtroom now, and
5 when this first matter is concluded, we will call the matter
6 in which you are interested, and you will have an
7 opportunity to speak, all right?

8 Thank you. I apologize, Mr. Ziehl.

9 MR. ZIEHL: No problem, Your Honor. So the issue
10 presented, Arch's response to those, the issues which is
11 whether or not Arch is required to release the collateral
12 and complete this work and not put it on. Their response
13 was, they will agree to arbitrate the first issue --

14 THE COURT: Their collateral orders?

15 MR. ZIEHL: Their collateral, but they refused to
16 deal with the second issue. And I said, well, let's let the
17 arbitrator decide arbitrability, and they refused to let
18 the arbitrator decide the arbitrability of it. So I'm
19 not asking to waive their argument, but that decision should
20 be made by the arbitrator.

21 THE COURT: Right.

22 MR. ZIEHL: And then they refused to sign the
23 stipulation to allow the arbitration to commence, which is
24 why we're here today, Your Honor.

25 The obligation to arbitrate couldn't be clearer.

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1 The large Lehman agreement has the broadest possible terms.

2 THE COURT: That's paragraph 13.

3 MR. ZIEHL: Yes, Your Honor, I won't read it, I
4 know that you have. And that those disputes is to be done -
5 - administered by JAMS with Judge Weinstein as the
6 arbitrator.

7 The Court has clear authority to order this matter
8 to arbitration. The October 19th, 2011 approval order
9 expressly retained jurisdiction also in paragraph 4 in the
10 broadest terms, I won't read that to you, I know the Court
11 has.

12 The district court has jurisdiction under 28
13 U.S.C. 1334. This is a rising in jurisdiction, it is core
14 matter, it was when it was approved.

15 THE COURT: But the -- but Arch points out in the
16 nicest possible way --

17 MR. ZIEHL: Yes.

18 THE COURT: -- that I'm a bankruptcy court, not a
19 district court.

20 MR. ZIEHL: That's correct. We have an automatic
21 reference --

22 THE COURT: Yes, we do, don't we.

23 MR. ZIEHL: -- in this district, and there's a
24 standing order of reference, which gives the bankruptcy
25 court subject matter jurisdiction and to enforce its own

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1 orders. And I really would just refer you to the In Re
2 Motors Liquidation case where the district upheld Judge
3 Gerber doing exactly the type of thing that we're requiring
4 here.

5 Your Honor, there are really no valid arguments
6 against this. What they do is they set up a strawman
7 argument. They argue that what Lehman is doing is enforcing
8 an agreement that it's not a party to, that doesn't have an
9 arbitration clause, that has an indispensable party, which
10 is the city, which is the ELR agreement that was attached to
11 as an exhibit.

12 This wouldn't be the first case where to decide a
13 contract you would have to interpret some other agreement
14 that the parties who were in this case, Lehman was not a
15 party to. That does not invalidate the obligation to
16 arbitrate the dispute under our agreement with them, which
17 is really a financial dispute at this point.

18 There's ample Supreme Court authority. I don't
19 want to go through everything, because I think we briefed it
20 very well, but we ask that the Court compel arbitration,
21 Your Honor. The arbitration clause didn't say where the
22 arbitration had to be, as I -- we're perfectly fine having
23 it ordered in the -- in New York, since that's an argument
24 they raised under the Arbitration Act, that's just fine.
25 That's where the agreement was concluded anyway. And this

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1 has really no California connection. Unless the Court has
2 other questions I'm done.

3 THE COURT: You're done. Thank you very much, Mr.
4 Ziehl. Good morning.

5 MR. SHAHINIAN: Good morning, Your Honor. Armen
6 Shahinian from Chiesa, Shahinian & Giantomasi for Arch.

7 Fundamentally the problem here is what is it they
8 are seeking to compel arbitration of.

9 THE COURT: I think Mr. Ziehl stated it pretty
10 clearly, they want their collateral released, and they want
11 at a minimum, the arbitrator to determine -- well, they
12 would like their first question answered, but at a minimum,
13 they would like to have the arbitrator decide the issue of
14 the arbitrability of the question.

15 MR. SHAHINIAN: Right. So back up a moment
16 because the issue of what the arbitrator is going to
17 determine has to be predicated upon what the agreement is,
18 that is the subject of the dispute.

19 THE COURT: Well, let me ask you a question. If
20 you had wanted to make it clear that if a dispute arose as
21 to Arch's obligation to continue to perform under the ELR
22 settlement agreement, you could have expressly said
23 provided, however, that there shall not be arbitration to
24 the extent that an issue arises over that issue.

25 MR. SHAHINIAN: Right.

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1 THE COURT: But you didn't do that. So your
2 construction -- your construction rather renders meaningless
3 the importation, if you will, of the ELR settlement into the
4 big settlement.

5 MR. SHAHINIAN: So I think that the source of
6 confusion here because the issue that they are -- let's look
7 at the issue they're seeking to arbitrate.

8 THE COURT: Sure.

9 MR. SHAHINIAN: So --

10 THE COURT: And you're referring to the January
11 28th -- July 28th, 2015 request for arbitration?

12 MR. SHAHINIAN: I believe so, Your Honor.

13 THE COURT: Okay.

14 MR. SHAHINIAN: It states two issues.

15 THE COURT: Right.

16 MR. SHAHINIAN: And the issue that is the subject
17 of dispute here is whether Arch is obligated under the ELR
18 settlement agreement, and by reference therein, under the
19 settlement agreement, to complete the undergrounding work at
20 its sole expense, and if so, whether Arch is entitled to any
21 reimbursement therefore of the settlement agreement beyond
22 the ELR payment cap amount of 1.1 million.

23 THE COURT: Uh-huh.

24 MR. SHAHINIAN: So what is the obligation in the
25 agreement that it's asking to arbitrate. The obligation is

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1 a reimbursement obligation for a payment made. It is not an
2 issue of exoneration with respect to potential future
3 liability. The cause of action that Arch will have at some
4 point in time is a cause of action only for reimbursement.
5 That cause of action has not yet accrued.

6 What they're trying to do is seek an advisory
7 opinion from an arbitrator regarding an obligation that
8 exists in a separate agreement that is not incorporated by
9 reference. It is referenced, but it's referenced because
10 they need to reference what it is that the payment is going
11 to be that they're going to ultimately have liability to
12 reimburse for. A cause of action for reimbursement doesn't
13 arise until payment is made.

14 THE COURT: Well, but here's the problem. The
15 problem is that, and I understand the way you formulated it,
16 it does sound like an advisory opinion. But from the
17 perspective of Lehman, when it entered into the settlement
18 agreement, its goal and the goal that it thought it had
19 accomplished was to be done, 1.1 and done, collateral comes
20 out, the rest of you are on your own.

21 MR. SHAHINIAN: Right.

22 THE COURT: Okay. Now, what you're saying is
23 that, well, we don't know what's going to happen, and at
24 some point we might turn to Lehman and say, pay us more.
25 And Lehman needs clarity on that point because to the extent

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1 that you're right and they're wrong, that effects -- once
2 conduct is affected by whether or not one believes they're
3 going to reimbursed from someone else, so that's kind of an
4 important gating issue going forward.

5 But in any event, what Mr. Ziehl is saying is,
6 that's great, you can make that argument to Judge Weinstein.
7 He can decide whether or not you're right or he's right.

8 MR. SHAHINIAN: Okay. So let's talk then about
9 what the arbitration agreement is.

10 So we agree --

11 THE COURT: Meaning the agreement to arbitrate
12 that's in the --

13 MR. SHAHINIAN: Correct.

14 THE COURT: -- Lehman agreement.

15 MR. SHAHINIAN: In the Lehman agreement.

16 THE COURT: Right.

17 MR. SHAHINIAN: So contrary to what has been
18 represented about the broadest possible terms with respect
19 to this arbitration agreement, unlike many of the other
20 cases that he cites, he talks about any and all claims, but
21 it stops there. It's not just any and all claims that are
22 subject to arbitration, it's any and all claims with respect
23 to the enforcement of this agreement or -- excuse me, it's
24 not any and all claims.

25 THE COURT: Performance, interpretation or

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1 enforcement.

2 MR. SHAHINIAN: Okay. So cannot -- if the parties
3 cannot resolve any dispute which may arise between them
4 concerning the performance interpretation or enforcement of
5 this agreement or with respect to any claims, that's where
6 the any claims comes in, right. So with respect to any
7 claims, they don't say any claims before that. With respect
8 to any claims arising under this agreement, the parties
9 agree that any such dispute shall be submitted to binding
10 arbitration.

11 They don't say this agreement or any other
12 agreement, they don't say any and all claims, no matter what
13 they might be. The context here is this, Judge, because I
14 think it's very important to understand the context of these
15 agreements.

16 The context is that Arch funded Sun Cal in this
17 job out in California.

18 THE COURT: Right.

19 MR. SHAHINIAN: Lehman comes to Arch and says,
20 Arch, support my plan as the lender on this job, not the Sun
21 Cal plan, you're the bonding company for Sun Cal, I'm going
22 to take possession, I want to take title, I want to develop
23 this property.

24 Well, Arch is the bonding company for Sun Cal,
25 they're not the bonding company for Lehman. Now, if Lehman

1 were going to come in and undertake now to become the
2 owner/developer, if the work is going to be done on this
3 project, it's now going to be done by Lehman for its
4 benefit.

5 Now, if it can get its own bonds, and it would be
6 required to get its own bonds to develop this property, to
7 get the permits necessary to do work, but instead of getting
8 its own bonds, it wants to rely on the original Sun Cal
9 bonds. And we're okay with that, provided they pay the
10 cost.

11 Now, what is the cost going to be? We don't know
12 exactly what the cost is going to be, but there's a
13 delineated scope of work that we understand to be the work,
14 we give pricing on it, it's a million dollars of work, and
15 we say, okay, give us a guarantee that you're cost to pay
16 our cost is, and they say okay. And they say, okay, come
17 back and I want to cap it, because I want to be quantify
18 this, what's this really going to cost me because I've got
19 to go approve, you know, this deal, and what it's about
20 going to cost. And I say, well, we can't be sure it's going
21 to cost a million dollars, it's not been -- you know, we
22 haven't paid it yet, we haven't gotten a firm quote yet, we
23 don't have all the approvals for the work yet, but it's
24 estimated at a million. Okay. We'll throw \$100,000 on
25 there for contingencies and that should cover the work.

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1 Now, what happened in the interim is that the
2 local utility started intervening and changing the scope of
3 the work to be done. That has given rise to a dispute
4 because we didn't bond a revised scope of work, we bonded
5 the original scope of work for Sun Cal.

6 So now we're talking, we have an agreement
7 ultimately that's entered in the Sun Cal bankruptcy between
8 -- excuse me, agreement entered between the City and Arch --

9 THE COURT: Right.

10 MR. SHAHINIAN: -- with respect to the performance
11 of this work. And we agreed we're going to perform the work
12 as we originally bonded it.

13 Lehman comes in and says, and you won't have to
14 pay because if you support my plan, instead of you having a
15 lien on the property of Sun Cal, you're now going to have a
16 lien on the property that I'm going to give you because I'm
17 going to own it.

18 THE COURT: What you're suggesting now though is I
19 think something categorically different from what you were
20 talking about in your papers. Because it's beginning to
21 sound as if you're suggesting that somehow someone was
22 misled.

23 MR. SHAHINIAN: No, I --

24 THE COURT: I mean, from my perspective, I'm
25 looking at plain words on a page.

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1 MR. SHAHINIAN: Right.

2 THE COURT: Right. Plain words on a page, and the
3 pages are the settlement agreement, the Lehman settlement
4 agreement.

5 MR. SHAHINIAN: Right.

6 THE COURT: Right. And the Court's order
7 approving the settlement agreement.

8 So you're now in kind of deep background,
9 suggesting that --

10 MR. SHAHINIAN: Let me give you a context, because
11 I mean when you come back to the language what --

12 THE COURT: Okay.

13 MR. SHAHINIAN: -- was agreed upon.

14 THE COURT: All right.

15 MR. SHAHINIAN: So what the promise is by Lehman
16 is to reimburse us for the payment. If we knew how much the
17 payment was, it would've just been liquidated, it would have
18 been put in the agreement at that time, but we didn't know
19 precisely what the payment would be.

20 The payment and the amount of the payment is
21 ultimately going to be determined, based upon the Arch
22 Palmdale agreements. If there are any disputes under the
23 Arch Palmdale agreement, that's going to be decided in
24 California by a California court under California choice of
25 law, and that's going to end up deciding and determining how

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1 much we have to pay.

2 Now, a cause of action against Lehman doesn't
3 accrue until payment is made, a demand for payment from them
4 is paid and they refuse to pay. And we agreed we would
5 arbitrate. What we're going to arbitrate is disputes under
6 this agreement, that is the agreement between us and Lehman.
7 We're not going to arbitrate disputes as between us and the
8 City of Palmdale because we can't. That agreement requires
9 that it be litigated in California before a California
10 court, and that will end up deciding how much we have to
11 pay. We will then pay it, and then we will make a demand.

12 What they're trying to do with all due respect, is
13 put the cart before the horse. What they'd like to do is
14 have some arbitrator decide, well, this is about your
15 liability to Palmdale, it's not about what our liability is
16 at all. It's about reimbursement for a payment because the
17 arbitration clause is enforcing this agreement. And this
18 agreement says they have an obligation to reimburse us for a
19 payment.

20 A dispute could arise, we don't dispute that a
21 dispute could arise, we understand we agreed to arbitrate
22 that dispute in -- before this judge in an expedited
23 arbitration, which was to take place within 48 hours in
24 California because unlike what has been suggested here, this
25 agreement came out of a mediation before Judge Weinstein and

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1 JAM's in California.

2 THE COURT: Okay. I'm not that interested in the
3 New York versus California.

4 MR. SHAHINIAN: Okay.

5 THE COURT: So.

6 MR. SHAHINIAN: So let's get back to what it is
7 that we agreed to arbitrate, disputes under this agreement.
8 If we -- for a cause of action accrues because we've made a
9 payment, and they don't pay and we have a dispute, it's
10 subject to arbitration. But that never arises, you don't
11 have a dispute until a cause of action accrues.

12 And this agreement doesn't say we no longer
13 arbitrate any disputes arising with respect to our possible
14 liability or perspective liability that may arise out of the
15 liability you had to the City of Palmdale, it is not an
16 exoneration obligation. It is not even an indemnity
17 obligation per se. You could say reimbursement obligation.

18 And right of reimbursement does not accrue until a
19 payment is made, and we all knew going in, that that payment
20 was going to be predicated upon the City of Palmdale
21 agreement that doesn't have an arbitration clause, that is
22 not subsumed within this arbitration clause.

23 THE COURT: Okay. I'm looking at the Lehman
24 settlement agreement that was approved by Judge Peck. Okay.
25 I'm looking at paragraph 3(d).

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1 MR. SHAHINIAN: 3(d).

2 THE COURT: 3(d), are you with me?

3 MR. SHAHINIAN: I think so, that's "provided
4 that."

5 THE COURT: "Provided that."

6 MR. SHAHINIAN: Yep.

7 THE COURT: So the way I was reading that was it's
8 a cap.

9 MR. SHAHINIAN: Right.

10 THE COURT: But you just got done explaining why
11 it's not a cap.

12 MR. SHAHINIAN: But it is a cap. We are not
13 contending they owe us more than 1.1 million. Mr. Ziehl
14 misspoke about the payment of 1.1 million, that has not been
15 paid. There's nothing in the record that says that's been
16 paid, it has not been paid. That's what we're fighting
17 about, which we will fight about once we know if it's going
18 to be 1.1 million or if it's going to be a million or if
19 it's going to be 3 million.

20 If it's 3 million, it's 1.1 million, I don't have
21 a problem with that, Judge. We're not saying the cap
22 doesn't apply. They haven't paid us. We don't know how
23 much it's going to cost. How much it's going to cost is
24 going to depend on the resolution of the dispute with
25 Palmdale that's subject to being litigated in California.

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1 And until we pay, based upon whatever the resolution of that
2 dispute is, we don't know how much the money is.

3 There's no uncertainty here. It's not going to be
4 more than \$1.1 million. It's clearly subject to the cap,
5 and we don't contend it's not subject to the cap. The
6 question is, how much is it going to be.

7 Now, what the real motivation here, Your Honor, is
8 what they're trying to have this arbitrator do is
9 effectively give an advisory opinion about whether
10 undergrounding work is required in the Palmdale Arch
11 agreement. That is not an issue that is ripe for
12 determination here, because their only role is to pay us if
13 we make a payment, and whether the undergrounding work is
14 required or not, will be litigated in California, because
15 that's what the agreement requires.

16 If they want to intervene in that litigation
17 because they think they've got some interest to protect,
18 they're welcome to intervene in the litigation. But that is
19 not, in fact, what this agreement provides to be arbitrated.

20 THE COURT: So let me understand though. Arch
21 does not object to the submission to the arbitrator of the
22 second question, whether Arch is required under the
23 settlement agreement to release the collateral?

24 MR. SHAHINIAN: Yes, Your Honor.

25 THE COURT: But doesn't that necessarily involve

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1 the termination of the first question?

2 MR. SHAHINIAN: Well, you know, I personally
3 believe that, because I don't think it's ripe until you know
4 how much you have to pay, whether the collateral is still
5 needed or not. But frankly --

6 THE COURT: So then maybe we can simplify this by
7 simply saying that you're going to go to Judge Weinstein
8 with the second question.

9 MR. SHAHINIAN: I'm okay with that, Your Honor. I
10 think -- I do agree that we could argue before Judge
11 Weinstein whether that question is ripe or not, but that's a
12 collateral issue in this agreement that we agreed to
13 arbitrate, and therefore, I'll make more substantive
14 arguments to Judge Weinstein about that subject, which I do
15 believe to be premature there. But that is a collateral
16 issue that's unique to this agreement that arises under this
17 agreement that we agreed to arbitrate and okay with having
18 Judge Weinstein hear those arguments and decide those
19 arguments, decide the prematurity issue there, because we
20 agreed to that.

21 THE COURT: Give me one second. I wanted to look
22 at something else in 3(d).

23 (Pause)

24 THE COURT: Okay. Go ahead.

25 MR. SHAHINIAN: So what ultimately this is about

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1 is Lehman's attempt to have us improve their property at our
2 expense. That's what this is really about. They want to
3 broaden the scope of our obligations to the City of Palmdale
4 beyond those which we undertook with the City of Palmdale
5 because now they own the property. And if we can improve
6 their property at our cost, for their benefit, because they
7 negotiated this cap that would be great, but that's not what
8 this deal was all about.

9 This deal was about once we know what the
10 liability is, and once we pay the liability, they will
11 reimburse us. And if there is a dispute, we will arbitrate
12 the dispute. The cause of action simply hasn't accrued.

13 And these requests for an advisory opinion which
14 cannot bind, which cannot bind the City of Palmdale would
15 only subject us to a risk of premature results on an
16 advisory opinion on a cause of action that has not yet
17 accrued that we never agreed to submit to arbitration.

18 This arbitration clause doesn't say this agreement
19 and any and all other agreements. It only says about this
20 agreement. And this agreement which references the other
21 agreement, references it with respect to a reimbursement
22 obligation, and that cause of action has not yet arisen.

23 THE COURT: All right. Let me hear from Mr. Ziehl
24 again.

25 MR. SHAHINIAN: Your Honor, okay, I'm sorry.

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1 THE COURT: If you have -- let me hear from Mr.
2 Ziehl on this aspect of it, and then you can resume.

3 MR. SHAHINIAN: Thank you.

4 MR. ZIEHL: Your Honor, just very briefly.

5 THE COURT: So I have this feeling of -- that
6 we're in alternate universes here.

7 MR. ZIEHL: I think you put your finger on it
8 though. And the first comment is, if you read the first
9 clause of the arbitration agreement it says that, "any
10 dispute which may arise between them concerning the
11 performance, interpretation or enforcement of this agreement
12 or in the disjunctive with respect to any claim." The very
13 first sentence of --

14 THE COURT: Are you --

15 MR. ZIEHL: -- paragraph 13 of the settlement, the
16 Lehman settlement.

17 THE COURT: Paragraph 13 of the Lehman settlement?

18 MR. ZIEHL: Yes, page 14.

19 THE COURT: All right. Let me get there.

20 MR. ZIEHL: Or.

21 THE COURT: Or with --

22 MR. ZIEHL: Yeah, and he was trying to make it not
23 in the disjunctive. But I think the Court put your hand on
24 it. Every argument that he just made, is an argument that
25 he should be making to Judge Weinstein as to what is

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1 arbitral.

2 THE COURT: So then not to be, you know, too
3 clever but we could say, all right, go to Judge Weinstein
4 with B, whether Arch is required under the settlement to
5 release the Arch collateral, and in my view embedded in that
6 is the first question.

7 MR. ZIEHL: Correct.

8 THE COURT: So on we go.

9 MR. ZIEHL: Correct. And they can make --

10 THE COURT: You could submit a --

11 MR. ZIEHL: -- your argument for that, no, you
12 can't decide that part of it or that part of it, but it's
13 for Judge Weinstein to decide this.

14 THE COURT: But then you could submit a --
15 hypothetically, if your request for arbitration had only
16 said, a dispute has arisen between Arch and the Lehman
17 parties as to whether Arch is required under the settlement
18 agreement to release the Arch collateral irrespective, blah,
19 blah, blah --

20 MR. ZIEHL: Yes.

21 THE COURT: -- you would be arbitrating, because
22 they don't disagree with that.

23 MR. ZIEHL: No. But we started there, Your Honor,
24 I went back and said, here's what we claim the issues are.
25 It's without prejudice to you arguing that they're not.

1 THE COURT: Sure.

2 MR. ZIEHL: And --

3 THE COURT: What I'm saying is that in order -- if
4 you take that question to Judge Weinstein --

5 MR. ZIEHL: Yes.

6 THE COURT: -- the first question is going to come
7 up.

8 MR. ZIEHL: It will.

9 THE COURT: And you'll be there. And he'll
10 decide.

11 MR. ZIEHL: But they were specifically -- they put
12 language -- they marked up the stipulation for arbitration
13 excluding that question from the arbitration, they refused
14 to sign a stipulation if that issue was dealt with at all.
15 And that's the problem we have.

16 So they were not willing to let that issue either
17 be decided by or decided to be not arbitral by Judge
18 Weinstein.

19 THE COURT: Could you address the suggestion that
20 Lehman's trying to get free work done?

21 MR. ZIEHL: Yeah. The paragraph D, the agreement
22 provides the work that Arch has committed to be done, which
23 is the attached ELR agreement in D, talks about the -- the
24 ELR work committed to be performed by Arch under the
25 settlement agreement.

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1 Here's the reality, the other reality, the one
2 that he didn't describe. Arch will refuse to do it. Arch
3 will slow litigate with the city. Lehman has liens on its
4 property and cannot get the subdivision approval to sell the
5 property from the city unless the work is done.

6 So until -- unless the work is done, and that
7 means either Lehman will be stuck with having to do it if
8 Arch doesn't, that's the problem here. And we put in the
9 papers, it's clear Lehman is trying to sell this property
10 right now. And this is a cloud on title, and that's why we
11 need this resolved quickly.

12 THE COURT: All right.

13 MR. SHAHINIAN: May I respond?

14 THE COURT: Yes, Mr. Shaninian, and I interrupted
15 you, so you can keep going.

16 MR. SHAHINIAN: That's okay. The issue of cloud
17 on the title, I have no problem with this being submitted to
18 arbitration on the issue of, are they entitled to release of
19 the collateral. We can argue about what the merits are
20 before the arbitrator on issues relating to release of
21 collateral, what the collateral is for, what that collateral
22 -- what the trigger points are in the agreements for the
23 release of collateral, that's fine, that's our agreement
24 with them.

25 Now, we may have different views on what the

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1 predicate facts are that will trigger release of collateral,
2 and we'll argue --

3 THE COURT: But embedded in that is the issue of
4 the scope of the work.

5 MR. SHAHINIAN: Your Honor, embedded in that is
6 the issue --

7 THE COURT: Otherwise, you're going to go to Judge
8 Weinstein and if you tell him, we're here to arbitrate, but
9 you have nothing to say about the scope of the work. It
10 doesn't make sense.

11 MR. SHAHINIAN: Because on the merits, we're
12 entitled to win, Your Honor, but when we make that argument
13 to Judge Weinstein relative to collateral. What they're
14 trying to do is say, your obligation -- their obligation is
15 something other than reimbursement for payment, but that's
16 what the agreement says it's for. The agreement says it's
17 for reimbursement for payment because everybody knew how
18 that was going to get resolved, and it was going to get
19 resolved under the Palmdale agreement, which requires
20 litigation, which requires a choice of law in California,
21 and they're the ones driving the bus as to the dispute as to
22 what we have to do or don't have to do.

23 And that agreement, you know, they talk about
24 interpretation of this agreement, I have no problem with the
25 mediator interpreting this agreement, and we'll make those

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1 arguments about collateral. But one thing that's pretty
2 clear and it's not really subject to interpretation is, the
3 obligation of reimbursement for a payment made, and when a
4 cause of action for reimbursement of a payment made accrues.

5 THE COURT: But it just continues to sound to me
6 that that's all for Judge Weinstein to decide. So the
7 bankruptcy court, and for this purpose, you know, Judge Peck
8 and I are the same person, right. The bankruptcy court
9 okays a settlement, the settlement agreement has, you know,
10 a pretty hefty arbitration clause that to me suggests that
11 matters of arbitrability and scope of arbitrability go to
12 the arbitrator.

13 MR. SHAHINIAN: With respect to this agreement.
14 This agreement.

15 THE COURT: Right.

16 MR. SHAHINIAN: The Lehman agreement.

17 THE COURT: And the arbitrator can say, wait a
18 minute, this is not about this agreement, which I mean, my
19 two cents is that it is about this agreement, because to the
20 extent that you have a settlement agreement that embodies,
21 encompasses, makes reference to another agreement, it then
22 becomes part of that agreement.

23 MR. SHAHINIAN: It becomes part of that agreement
24 to determine how much we paid. It's to determine how much
25 we paid.

1 THE COURT: I love lawyers.

2 MR. SHAHINIAN: Well, no, Your Honor, under the
3 language of this agreement --

4 THE COURT: Sure.

5 MR. SHAHINIAN: -- and what the reality of this
6 agreement is and why it says that, the reality is, we didn't
7 know how much we would have to pay. And they can't tell us,
8 an arbitrator can't tell us, he can give an advisory
9 opinion, well, my opinion you should have to pay this. But
10 that's not going to bind anybody.

11 What's going to bind us is what a judge in
12 California says, this is how much you have to pay. At that
13 point in time, we'll have to pay it. At that point in time,
14 we'll make a demand upon them. At that point in time, they
15 will either pay it or they will dispute it. If they dispute
16 it, it goes to a mediator. But it never gets to the
17 mediator until the Court that has the power to decide the
18 issue of how much we have to pay renders a decision as to
19 that. And advisory opinion from this mediator about how
20 much we're going to have to pay is meaningless.

21 THE COURT: It's not a mediator, it's an
22 arbitrator.

23 MR. SHAHINIAN: Excuse me, I'm sorry.

24 THE COURT: In an --

25 MR. SHAHINIAN: It was a mediator who became an

1 arbitrator.

2 THE COURT: Right. Pursuant to an agreement that
3 you made to arbitrate the dispute.

4 MR. SHAHINIAN: Yes, but not as to the
5 reimbursement obligation.

6 THE COURT: But do you think that Lehman -- then
7 Lehman's agreement here they got a pig and a poke, I mean,
8 then if your construction is correct, then the arbitration
9 clause is pretty meaningless.

10 MR. SHAHINIAN: No, not at all, Your Honor,
11 because the arbitration clause covers an entire agreement,
12 covers many things --

13 THE COURT: But the release of the collateral is a
14 big thing.

15 MR. SHAHINIAN: That's right. And we're saying
16 they can mediate that, that's fine. But if you look at what
17 their issue is and how they state the issue is whether we
18 are obligated under the ELR settlement agreement, and by
19 reference therein, under the settlement agreement with
20 Lehman to complete the undergrounding work at the sole
21 expense, completion of the undergrounding work at the sole
22 expenses of the driver, it's the payment --

23 THE COURT: But the question --

24 MR. SHAHINIAN: -- that's the driver.

25 THE COURT: -- for the arbitrator is, those magic

1 words and by reference therein --

2 MR. SHAHINIAN: Right.

3 THE COURT: -- to bring it within the scope of the
4 paragraph 13 dispute resolution paragraph. That's for the
5 arbitrator to decide.

6 MR. SHAHINIAN: It doesn't bring within the scope
7 the -- what they are asking. They're asking whether we're
8 entitled to reimbursement. That's what the issue is. They
9 framed the issue as whether we are entitled to
10 reimbursement, that is, in fact, what the issue is.

11 And that issue simply cannot be determined by this
12 arbitrator, by any arbitrator, by anyone until the City of
13 Palmdale gets a judgment in California where everybody knew,
14 including Lehman going in, that's where this was going to be
15 resolved, that we would then get a judgment against us, and
16 we would have a payment that we would have to make, and then
17 we would reimburse them.

18 But they're trying to have this mediator opine as
19 to what the scope of the reimbursement obligation is when we
20 haven't even made payment yet, we haven't made a claim for
21 reimbursement.

22 So if there's issues, if they're concerned about
23 issues relative to collateral, which they say are clouding
24 the title, and understand, this is a very large subdivision,
25 and this amount of money isn't clouding title, and that can

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1 certainly be addressed and resolved. It may be resolved
2 consensually before the arbitrator formerly mediator or not.
3 It's for him to decide the conditions under which they're
4 entitled to their release of collateral. Because collateral
5 is not addressed in the Palmdale agreement with us.

6 THE COURT: Right.

7 MR. SHAHINIAN: That's not the subject of the
8 Palmdale dispute. What's the subject of the Palmdale
9 dispute is how much we're going to have to pay. And now
10 what they're trying to do is bring the reimbursement
11 obligation, that's what they're talking about, a
12 reimbursement obligation. Well, payment hasn't been made,
13 we don't know how much we're going to have to pay. And
14 until we know that, any opinion is advisory until the Court
15 has jurisdiction over that issue --

16 THE COURT: But you will make that precise
17 argument to Judge Weinstein.

18 MR. SHAHINIAN: But they will --

19 THE COURT: Hold on. You'll make that precise
20 argument to Judge Weinstein, and then he will say, if he
21 agrees with you, he can't release the collateral because he
22 doesn't know what the reimbursement amount is, right?

23 MR. SHAHINIAN: We will make that as to the
24 reimbursement, as to the collateral issue.

25 THE COURT: Right.

1 MR. SHAHINIAN: But we won't be making the
2 argument and having the Court to decide -- what they are
3 asking the Court to decide here is what is the scope of the
4 obligation that gives rise to the reimbursement of the
5 payment that you haven't made yet, you haven't made a demand
6 yet, you haven't had a cause of action yet.

7 THE COURT: You know, and I -- maybe I'm confused.
8 Are we arguing over \$1.1 million?

9 MR. SHAHINIAN: Effectively as to --

10 THE COURT: From Lehman's perspective?

11 MR. ZIEHL: No, Your Honor.

12 THE COURT: You're going to have to help me out
13 because I -- then I don't understand --

14 MR. ZIEHL: The ELR work they --

15 THE COURT: Right. The collateral release --

16 MR. ZIEHL: Yes.

17 THE COURT: -- that language says it's the lessor
18 of --

19 MR. ZIEHL: Yes.

20 THE COURT: -- 1.1 million or the amount.

21 MR. ZIEHL: Correct.

22 THE COURT: So I thought about probably about half
23 an hour ago, I did have agreement that at most we were
24 talking about \$1.1 million from Lehman's standpoint. That's
25 not correct?

1 MR. ZIEHL: Yeah, unless Arch does not do the work
2 that it was obligated to perform --

3 THE COURT: Right.

4 MR. ZIEHL: -- in which case, and if Lehman is
5 stuck with that obligation, it's this other uncertain amount
6 of money. The thing that Lehman negotiated not to be
7 exposed to by having a cap on --

8 THE COURT: See, that gets back -- so that gets
9 back -- that gets exactly back to where I started, which was
10 the way I'm reading the settlement agreement approved by
11 Judge Peck was that from Lehman's perspective what Judge
12 Peck approved was a cap. That's -- this settlement
13 agreement approved by this Court reflects a cap.

14 And there was an agreement to arbitrate disputes
15 about this settlement agreement. So broadly speaking, the
16 issue is, is it a cap, or isn't it a cap, and related to
17 that now comes the release of the collateral. And I hear
18 you but --

19 MR. SHAHINIAN: Well, but --

20 THE COURT: -- I still -- go ahead.

21 MR. SHAHINIAN: So I think that -- I agree with
22 everything you just said.

23 THE COURT: Okay.

24 MR. SHAHINIAN: So there's no dispute about that.
25 Where the dispute arises is how they framed the issue.

1 THE COURT: So then go in my conference room and
2 frame the issue a different way.

3 MR. ZIEHL: I'll do better than that, Your Honor.
4 We will stipulate that we can frame the issue the way we
5 want to, they can frame it the way they want to, and the
6 arbitrator will decide what the issue is.

7 MR. SHAHINIAN: Okay. The --

8 THE COURT: Yes.

9 MR. ZIEHL: He's asking for an advisory opinion
10 here --

11 THE COURT: I'm not going to give you one.

12 MR. SHAHINIAN: I'm not asking this Court to give
13 me an advisory opinion. I'm saying that the --

14 THE COURT: Well, you say I don't even have
15 jurisdiction, so you don't even want me to give any opinion.

16 MR. SHAHINIAN: I don't see how this has a close
17 nexus to the plan of reorganization of Lehman, so I don't
18 think you do to be perfectly candid. We haven't got to that
19 part of the argument.

20 I -- whether their cap is 1 million, 1.1 million,
21 900,000 --

22 THE COURT: I always have jurisdiction to enforce
23 my own orders.

24 MR. SHAHINIAN: But we're not saying that there's
25 anything in the arbitration agreement, we're not trying to

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1 escape liability for the arbitration --

2 THE COURT: You're trying to escape arbitration.

3 MR. SHAHINIAN: No. We're trying to limit the
4 arbitration clause because unless there is certainly clear
5 and unequivocal language saying that the dispute with the
6 City of Palmdale over the scope of our work is subject to
7 arbitration, it is not subject to arbitration.

8 THE COURT: I keep coming back to the issue of
9 whether, you know, the devil in the details here is with all
10 due respect to whoever phrased the request for arbitration
11 is the wording of the request.

12 For example, you could submit the issue to Judge
13 Weinstein as whether the undergrounding work is subject to
14 the cap reflected in paragraph 3(d) of the settlement
15 agreement.

16 MR. SHAHINIAN: Your Honor, I frankly think that
17 it would be premature for the mediator, since we're talking
18 about -- this comes -- the relevance of this is the
19 reimbursement demand, because that's what they're saying
20 here, and therefore entitled to reimbursement.

21 THE COURT: But from the perspective of the
22 settlement agreement, the threshold issue is was this a cap
23 or was it not a cap. And your construction really renders
24 the arbitration clause meaningless.

25 MR. SHAHINIAN: No, it doesn't, not at all, Your

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1 Honor. For example, whatever the -- there are many triggers
2 to release of collateral. They're in our agreement, it is
3 what it is. What they're trying to do is say, is they want
4 to know how much the reimbursement is going to be. We don't
5 know that until we have to make payment and make a demand.

6 And then if they say, that demand is for too much
7 money, we'll have to arbitrate it. But until we know how
8 much we have to pay it, and pay it, our cause of action for
9 reimbursement doesn't accrue in any other decision by any
10 tribunal in which the City of Palmdale is not bound would
11 simply subject us to the risk of inconsistent
12 determinations, and be an advisory opinion because our cause
13 of action hasn't even accrued yet. And they're seeking to
14 have an arbitrator decide the reimbursement issue that
15 hasn't accrued yet. And that's why we object to A.

16 We understand there are substantive arguments that
17 will be subsumed in B that will touch upon some of these
18 issues, and we'll have to deal with that. But --

19 THE COURT: Then go with B, and you each can
20 present your arguments to Judge Weinstein as to what -- how
21 you unpack B.

22 MR. SHAHINIAN: I agree with that.

23 THE COURT: Okay. Then we're done.

24 MR. SHAHINIAN: So if the issue is stated as issue
25 B, they can make whatever arguments they want to make

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1 relative to why they're entitled to collateral release, and
2 we'll oppose them, and the judge will decide. The
3 arbitrator will decide. And we don't disagree with that,
4 because we did agree to arbitrate the --

5 THE COURT: But it doesn't preclude them, it
6 doesn't preclude them, nor do I think you can fully resolve
7 the issue reflected in B without touching on the ELR
8 settlement which, in fact, was incorporated by reference, if
9 you will, into the Lehman settlement agreement which
10 provides for arbitration of disputes under that agreement or
11 any claims arising under that agreement. And he will decide
12 whether or not, you know, how that works.

13 MR. SHAHINIAN: It was not incorporated by
14 referenced. It was referenced.

15 THE COURT: It was referenced.

16 MR. SHAHINIAN: It was referenced. And so we
17 already knew that those issues were going to be litigated at
18 Palmdale, that was never a surprise to anybody.

19 THE COURT: Well, I think that it's a lawyer's
20 distinction to say incorporated by reference because this
21 whole settlement agreement revolves around it.

22 MR. SHAHINIAN: That's right, no problem. But the
23 settlement agreement is a reimbursement obligation --

24 THE COURT: Sure.

25 MR. SHAHINIAN: -- and we can't lose sight of that

1 --

2 THE COURT: Sure.

3 MR. SHAHINIAN: -- because that drives everything.

4 THE COURT: Sure.

5 MR. SHAHINIAN: What they're trying to do is
6 convert a reimbursement obligation into a potential
7 exoneration obligation as to which they will then have --

8 THE COURT: Right.

9 MR. SHAHINIAN: -- an interest in --

10 THE COURT: I understand.

11 MR. SHAHINIAN: -- how much.

12 THE COURT: But you know, you can take the
13 transcript of this morning, and you can give it to Judge
14 Weinstein and he can, you know, get a head start on what
15 you're going to talk about, and --

16 MR. SHAHINIAN: That's fine, Your Honor, as long
17 as we're talking about B, and we're not talking about
18 reimbursement because --

19 THE COURT: Well, we're talking about B and what I
20 said was, that subject to the party's rights to unpack B,
21 the way each of you thinks it ought to be unpacked.

22 MR. SHAHINIAN: They can make their arguments to
23 Judge Weinstein about that.

24 THE COURT: So the question is, if you wish to
25 preserve -- well, I don't want to be presumptuous or sound

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1 coercive, but --

2 MR. SHAHINIAN: That usually comes right before
3 I'm about to be coerced.

4 THE COURT: Right. No, truly, I'm just -- I
5 always am very sensitive to preserving everyone's rights vis
6 a vis an appeal. So -- and here I think we do have a
7 disagreement about jurisdiction. I think that the
8 jurisdictional point is clear that first of all, district
9 court versus bankruptcy court, bankruptcy courts all the
10 time hear and decide motions to compel arbitration under the
11 FAA.

12 Secondly, this is an order of this Court approved
13 under 9019. I always have jurisdiction to enforce my
14 orders, which is what I view this as. If you like, I can
15 read a long version, I could bore you by reading a decision.
16 If you think that the two of you can actually distill where
17 we just got to into an order that you would be content to
18 proceed based upon, and not worrying about appeals, I'll do
19 it that way.

20 And again, I can read what I have, or you know, or
21 we can try to reflect --

22 MR. ZIEHL: Your Honor --

23 THE COURT: -- the wording in an order, or we
24 could let the transcript -- I could so order the transcript
25 and save the lawyers from another round of having to try to

1 agree on something.

2 MR. SHAHINIAN: Well, I'm not anxious to have
3 either Mr. Ziehl or Mr. Hopkins fly back from California,
4 Your Honor. If substantively we are at the point that what
5 is going to be arbitrated is B and everyone preserves all
6 their rights with respect to what their arguments are with
7 respect to B.

8 THE COURT: Well, everyone's preserving their
9 rights to argue to the arbitrator about the scope of what is
10 encompassed in B.

11 MR. SHAHINIAN: That's fine.

12 THE COURT: Mr. Ziehl?

13 MR. ZIEHL: Yeah, Your Honor, I think that's the
14 only way to go. The arbitrator has to decide scope, and all
15 the parties are free to argue what is and isn't arbitral.

16 MR. SHAHINIAN: Scope of what's within B, yes, you
17 know.

18 MR. ZIEHL: This is the problem that we had. This
19 is why we will never go in a room to be able to agree on how
20 -- what the arbitration is about, because they will keep
21 trying to narrow it to what they want to have arbitrated.
22 They're not going to let the arbitrator make a decision
23 based on the arguments of the parties.

24 We have offered and offered months ago, that we
25 stated the issues, it's without prejudice to them saying

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1 that that's outside of the scope of the arbitration but they
2 wouldn't accept that, and they wouldn't agree to arbitration
3 on that basis.

4 THE COURT: But what I'm -- but B, I cannot
5 understand, I'm not smart enough with respect to this matter
6 yet, I cannot understand how you could fully address B
7 without touching on A.

8 MR. SHAHINIAN: Yes. Our position will certainly
9 be B will be premature until we know how much we have to
10 pay, because until we know how much we have to pay we won't
11 know how much our right of reimbursement is.

12 THE COURT: And Mr. Ziehl then gets to say, that's
13 not right. So we do -- so we agree. We agree on the
14 question. You're going to go to Judge Weinstein with B,
15 subject to the party's rights to unpack it vis a vis A.

16 MR. SHAHINIAN: When you say unpack it, what I
17 understand that to mean is that he can make his arguments
18 that he is entitled to the release of collateral and on
19 whatever basis he's entitled to the release of collateral,
20 he will argue he is entitled to release of collateral.

21 THE COURT: Yes. Well --

22 MR. SHAHINIAN: We will argue that he is not
23 entitled to release of title. What is not going to be
24 arbitrated is what is the amount of reimbursement to which
25 he's entitled, which is what he's seeking to have arbitrated

1 before we've made a payment, and before the reimbursement --

2 THE COURT: Well, if you strike the parenthetical,
3 part of resolving B has to be whether Arch is obligated to
4 complete the undergrounding work.

5 MR. SHAHINIAN: Whether we are obligated to
6 perform the undergrounding work is going to be decided by a
7 judge in California in our dispute over the Palmdale
8 agreement which requires litigation in California. They're
9 going to decide, and we're going to pay, and that's the
10 number.

11 THE COURT: Well, now we're chasing our tails.

12 MR. SHAHINIAN: Right.

13 THE COURT: So we can do this one of two ways. I
14 can read to you for about 20 minutes what I have which says
15 that the scope of arbitration, which reflects that I have
16 jurisdiction, and recites with a lot of words, that the
17 scope of arbitration is a question for the arbitrator or we
18 can let this record stand as a ruling that you're going to
19 go and arbitrate B, and the party's rights are preserved to
20 in essence argue to the arbitrator what's encompassed in B,
21 including matters pertaining to the ELR which was referenced
22 in the subject of the settlement agreement in which the
23 arbitration decision provision presides.

24 And I truly, I truly, I'm happy to read, happy to
25 have you take a break and I can read, let you talk to each

1 other --

2 MR. SHAHINIAN: I'm fine with letting the record
3 stand and I think that if we are -- we will have our
4 respective arguments before the arbitrator relative to what
5 drives the release of the collateral, and he'll decide.

6 MR. ZIEHL: Your Honor, counsel's drawing
7 distinctions here that I'm not sure I follow. I think it's
8 probably better to put on the record what the Court has,
9 rather than have a record that's gone back and forth and
10 argue about what's in the transcript. I'd rather just get a
11 clear ruling and move forward.

12 THE COURT: Well then perhaps what we ought to do
13 is allow me to take the other matter on the calendar. You
14 can talk to your co-counsel, you can talk to Mr. Ziehl if
15 you like, and then I'll ask you to come back up and I'll
16 read to you for about 20 minutes or so.

17 MR. ZIEHL: Thank you, Your Honor.

18 THE COURT: All right.

19 MR. SHAHINIAN: My oral argument had no impact.

20 THE COURT: No. You see this is something that we
21 debate all the time, the balance between being prepared
22 versus I wouldn't say that your argument didn't have an
23 impact but --

24 MR. SHAHINIAN: Thank you, Your Honor.

25 THE COURT: -- I place a high value on moving

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1 things along, otherwise with all the Lehman matters --

2 MR. SHAHINIAN: I understand, Your Honor, thank
3 you.

4 THE COURT: -- it wouldn't work. So let me hear
5 from Mr. Fail and then we can continue.

6 MR. ZIEHL: Thank you, Your Honor.

7 (Pause)

8 THE COURT: Hello, Mr. Fail.

9 MR. FAIL: Good morning, Your Honor. Garrett
10 Fail, Weil Gotshal for the Lehman debtors.

11 Before you this morning for what I'm optimistic
12 may be the shorter of the two agenda items. This morning,
13 we have a continuation of a sufficiency hearing for four
14 omnibus objections, the Debtors' 213th, 214th, 215th, and
15 216th, as well as the first sufficiency hearing for the
16 Debtors' 379th omnibus objection.

17 There's a long procedural history, if I might try
18 to summarize it succinctly for you --

19 THE COURT: Sure.

20 MR. FAIL: -- it might be helpful.

21 Your Honor, there's 111 outstanding claims that
22 we're talking about today. The Court conducted a hearing
23 with respect to the 213th through the 216th omnibus
24 objection back in -- I believe back in 20 --

25 THE COURT: April of 2012.

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1 MR. FAIL: That was the second hearing --

2 THE COURT: Okay.

3 MR. FAIL: -- but there was an uncontested one
4 earlier, and there was a contested hearing. In the interim,
5 the debtors filed a reply to each one of the 213th through
6 the 216th objections, and in the exhibits thereto in the
7 text of the objection, responded to each individual,
8 summarized, responded and replied to each of the feedings or
9 filings and mostly letters that were interposed.

10 The Court did conduct a hearing on April 26, 2012.
11 The original objection was a cause and we can talk about
12 what the claims were for. The claims were filed, and most
13 just listed an ISIN number, a securities identification
14 number.

15 THE COURT: Right.

16 MR. FAIL: Which the Court is obviously familiar
17 with. That security is a preferred equity security in a
18 non-debtor, called Lehman Brothers UK Funding, and then
19 either 4 or 5.

20 THE COURT: Right.

21 MR. FAIL: There was two --

22 THE COURT: UK Capital Funding 4 or 5.

23 MR. FAIL: UK Capital Funding 4 or 5. And each of
24 those had with it a subordinated guarantee against and from
25 Lehman Brothers Holdings Inc. So with respect to the claims

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1 on file, the prima facie claim is a subordinated guarantee
2 claim against Lehman Brothers Holdings Inc.

3 THE COURT: Right.

4 MR. FAIL: The guarantee itself which was filed, a
5 copy of which was filed with the original objection, a
6 signed executed copy of the final guarantee was filed with
7 the debtors reply, says subordinated on it, no fewer than 40
8 times. Section 2.9 --

9 THE COURT: But it's not only subordinated, but
10 it's subordinated to all other subordinated liabilities.

11 MR. FAIL: Exactly, Your Honor, and that's because
12 of the nature of the investment. The UK Capital Funding
13 vehicles held subordinated debt from Lehman Brothers
14 Holdings Inc. Lehman Brothers Holdings Inc. guaranteed on a
15 limited basis only certain things, not the face value of the
16 investment. It guaranteed that if it paid on the sub-debt
17 essentially and the vehicle did not pass along that payment
18 on the sub-debt, then LBHI would essentially --

19 THE COURT: Right.

20 MR. FAIL: -- pay the creditors directly.

21 It did provide them as junior to all other
22 subordinated liabilities, and senior only to common stock of
23 LBHI. Consistent with that, in Section 2.10 for example,
24 there was a no set off provision, again evidencing that this
25 would not be a claim against LBHI that could be set off

1 against that, but be treated more as preferred equity.

2 Indeed 2.11 said that if payments were
3 accidentally made after the insolvency of LBHI, those
4 payments should be returned. No payments were made
5 obviously as a result of the bankruptcy.

6 These securities were sold outside of the United
7 States, but there was a prospectus that was issued with it.
8 Indeed, the prospectus says the words subordinated
9 approximately 170 times in it. The cover of the prospectus
10 says in bold on the top that it has the benefit of a
11 subordinated guarantee from Lehman Brothers Holdings Inc.

12 There's the typical warnings to investors, to
13 understand the risk factors associated with it in the
14 prospectus. The prospectus further clarifies and repeats
15 language that the guarantees are subordinated, and it was
16 said indeed, says quote on page 9, "the preferred securities
17 together with the subordinated guarantee are intended to
18 provide the holders with respect to the issuer, with the
19 rights on liquidation of the issuer equivalent to the
20 cumulative preferred stock of LBHI, whether or not issued."
21 Again treating it as preferred stock. And there are
22 additional references throughout, Your Honor.

23 Page 15, for example, that they're guaranteed on a
24 limited and subordinated basis by LBHI. It discusses the
25 consequences of LBHI and the risk factors associated with

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1 LBHI's financials. Page 16 provides that, "the obligation
2 of LBHI under the subordinated guarantee will rank junior as
3 to payments to all liabilities to creditors of LBHI
4 (including without limitation general creditors and
5 subordinated debt holders excluding the parity securities
6 and junior capital) and claim holders of senior ranking
7 securities."

8 THE COURT: So let me ask you a point of
9 clarification, if the remaining objectors -- let me back up.

10 MR. FAIL: Yes, Your Honor.

11 THE COURT: If the relief that Lehman is seeking
12 is consistent with previous orders to the effect that these
13 claims will either be Class 11 or Class 12 and we'll only
14 figure that out if by some miracle there's payment in full
15 of all senior classes or if Lehman, this round, is seeking
16 to disallow these claims and have them expunged, based on,
17 for example, the language in the guarantee that says, you
18 know, no further force and effect upon the dissolution of
19 the issuer.

20 Because, you know, as you know, we've done a lot
21 of subordination of claims and punted the question, if you
22 will, of their allowability because it just doesn't matter.

23 MR. FAIL: Your Honor, we attempted to take the
24 path of least resistance, and that's exactly what we did as
25 our reply stated, we tried that in 2012, and I just want to

1 be clear that what we were requesting is what we've asked
2 for and what the Court granted. We're not trying to use
3 those orders as preclusive, and indeed Judge Peck preserved
4 and said he wanted to hear -- the Court wanted to hear from
5 every similarly situated creditor, because a lot of these
6 are Mom's and Pop's and the debtors were cognizant of that,
7 sympathetic to the situation.

8 The debtors subsequently objected to every other
9 UK Capital Funding 4 and 5 claim. And that's how the 379th
10 objection, which was granted, Your Honor, with respect to 17
11 claims on a contested basis for \$10.7 million. There was
12 one letter filed by a pro se individual.

13 The debtors then filed the 428th objection, and
14 that was granted for every one of the 12 claims, which were
15 largely Citibank and Credit Suisse, Your Honor, for 61
16 million additional dollars.

17 And finally, Your Honor, there was a certificate
18 of no objection filed at ECF 51636 just this week or late
19 last week, Your Honor, for another \$3.6 million, six claims
20 that were largely JPMorgan's.

21 THE COURT: Okay.

22 MR. FAIL: So we've now captured the universe, and
23 given the opportunity for large and small holders
24 collectively to make the arguments. The vast majority of
25 these 111 claims that are outstanding simply objected to the

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1 disallowance. And while the debtors do believe there are
2 multiple arguments to --

3 THE COURT: Sure.

4 MR. FAIL: -- say that the face amount of the
5 claims aren't that, there's no reason to upset anybody,
6 there was no reason to bother the Court with it at this
7 time.

8 THE COURT: So that deals with -- I think Hogan
9 Lovells filed something on behalf of Lloyd's, right?

10 MR. FAIL: Correct, Your Honor. I think --

11 THE COURT: Is someone from Hogan Lovells here?

12 MR. FAIL: My understanding is that there were a
13 few claims that they originally objected for, I'll let
14 anyone speak for him or herself that is here, but they
15 represented a number of clients that we resolved with
16 respect to all but one of them, and I don't believe they
17 were going to prosecute it further.

18 THE COURT: Okay. So with that clarification as
19 to the nature of the relief that's being sought, I do have a
20 number of parties on the phone, and I'm not sure, to be
21 frank, if they filed written responses, objections or to the
22 extent which you've had an opportunity to engage with them.
23 So I would propose to call on them one-by-one, and hear from
24 them.

25 MR. FAIL: Your Honor, I think that makes sense.

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1 THE COURT: All right. So, operator, if you could
2 open up the line, please for everyone. I have a Mr. Gruher
3 on behalf of Jaime Murcia.

4 MR. GRUHER: Yes, Your Honor, good morning, Barry
5 Gruher, Genovese Joblove & Batista, and we're appearing on
6 behalf of creditor, Jaime Murcia.

7 And, Your Honor, to answer your question to the
8 written response, we have filed a written response, the
9 latest one would be amended response in opposition to the
10 objection to Claim No. 67453, and that would pertain to the
11 215th omnibus objection. And that amended response or that
12 document at 22672.

13 THE COURT: All right. Thank you. Now, having
14 heard my colloquy with Mr. Fail, do you have a continuing
15 objection to the subordination of the claims?

16 MR. GRUHER: Your Honor, actually we don't -- it's
17 not necessarily an objection to the subordination; however,
18 we did note in our amended response to the extent that
19 there's going to be a subordination, any subordination of
20 this claim should be ahead of any of the common stock as it
21 was set forth in our response, would be ahead of the common
22 stock of LBHI.

23 And I know that Mr. Fail and I have actually
24 discussed and e-mailed on this matter several years ago, and
25 I do understand that there's a proposed order that had been

1 certified.

2 For purposes of the hearing, Your Honor, not to
3 complicate things, we'll stand on our objection.

4 THE COURT: All right. Mr. Fail.

5 MR. FAIL: Your Honor, Class 12 provides for all
6 equity to be in the same class, Class 12, and if there is a
7 distribution to that class for it to be distributed in
8 accordance with the priorities of the underlying agreements.

9 We believe that these documents are clear that
10 they should be treated like preferred stock, which would
11 come ahead of common --

12 THE COURT: Okay.

13 MR. FAIL: -- in this case, the objection should
14 be moot and resolved.

15 THE COURT: Okay. Mr. Gruher, that sounds like
16 you're on the same page with Mr. Fail.

17 MR. GRUHER: Yes, Your Honor.

18 THE COURT: Okay. Very good.

19 All right. The next party I have, Mr. Iyer?
20 Perhaps he was not here on this matter.

21 Okay. Next I have Ms. Saskia Van Rooy.

22 MS. ROOY: Yes, hello (indiscernible) I would like
23 -- is it possible (indiscernible), he also (indiscernible)
24 speak up for her client, is it possible maybe to
25 (indiscernible) afterwards but I don't (indiscernible).

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1 MR. FAIL: Ms. Van Rooy, if I could repeat for the
2 Judge, I think I understood you to say that Ms. Tally Wiener
3 is here representing at least one other client, and you
4 would prefer --

5 MS. ROOY: Uh-huh.

6 MR. FAIL: -- that she speak. She's here in the
7 courtroom as is Mr. Hurst representing a separate client and
8 Mr. Venturini representing a third client. I understand
9 that you'd like to speak after or --

10 MS. ROOY: Yes (indiscernible).

11 THE COURT: Okay. Very well. Please come up.

12 MS. ROOY: Thank you very much.

13 THE COURT: Good morning.

14 MS. WIENER: Good morning, Your Honor. My name is
15 Tally Wendy Wiener, I'm here for Alex Wong whose claim is
16 subject to the 216th omnibus claim objection.

17 THE COURT: Okay.

18 MS. WIENER: And for Lionel Dardo Occhione, this
19 claim is subject to the 214th omnibus objection.

20 I'm flattered by Ms. Rooy's request that I speak,
21 and her claim is subject to the 213th claim objection.

22 THE COURT: Okay.

23 MS. WIENER: And I'll be very brief. I'm happy to
24 answer any questions the Court may have.

25 I was listening Your Honor's guidance with the

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1 previous hearing, and indeed you've said it for me, all I'm
2 asking you to do is to be the same person as Judge Peck for
3 purposes of adjudicating this. Judge Peck was going to take
4 this under advisement in April of 2012. I would like to ask
5 that Your Honor consider all of the responses that were then
6 pending, because Judge Peck said something like each
7 claimant speaks for all claimants, and then give us a
8 considered ruling based on those responses that were filed,
9 as they existed on that date.

10 Now, I had hoped what Weil Gotshal would do and
11 what Lehman would do was identify those responses for the
12 Court, because the papers that had been filed, it would take
13 like two days for the Court to pick out the different
14 responses. You also have some -- I'm sorry, the Court also
15 has some informal responses.

16 I think getting to the substance --

17 THE COURT: Well, I guess I'm a little confused.
18 I mean, all the time things come to me that for one reason
19 or another, Judge Peck took under advisement in the spirit
20 of allowing parties more time to have a conversation with
21 the estate's lawyers. But at a certain point, we have to
22 keep disposing of open issues.

23 We've had -- the subordination issues come in many
24 different contexts. This one is one of the simpler ones,
25 frankly, and I guess I just don't understand why now or what

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1 would be the basis for not subordinating the claims of the
2 clients that you are here representing today, when it's
3 crystal clear that these are subordinated claims.

4 MS. WIENER: Your Honor, it's not so clear to us.
5 I guess our question is subordinate to what, because the
6 provisions, while the subordination repeats the word, it's
7 really not clear, subordinate to what.

8 THE COURT: Well, let me put it this way, it says
9 that there's -- it's junior to all subordinated liabilities
10 of LBHI. So at the time, of course, that that was entered
11 into, you know, the Lehman world hadn't come to an end yet,
12 and that was a way of ordering the liabilities, you know,
13 without regard to a bankruptcy.

14 Then there was the bankruptcy, right, and there
15 was the plan of reorganization, and consistent with the
16 requirements of the Bankruptcy Code, the claims get sorted
17 according to the absolute priority rule.

18 So what this language means is that no matter how
19 many other subordinated liabilities there are of LBHI, these
20 liabilities rank below them, right. So for example, there
21 are claims made with respect to other securities, there are
22 claims made on account of certain compensation elements.

23 The point is that unfortunately unsecured claims
24 are not going to be paid in full. There's just not enough
25 value to go around. So whether or not one can precisely

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1 tell the amount of claims to which these claims are
2 subordinated or not, it simply doesn't matter. If we ever
3 got to that point it would be a miracle, and I would be
4 happy to come back and have that conversation. But for
5 right now, and consistent with the discussion I had with Mr.
6 Gruher on the last claim, these claims are below all other
7 subordinated claims as classified in the plan, but above the
8 common equity.

9 And there's no ambiguity on that point, there's no
10 issue of fact that any of these objection raises that would
11 require a further hearing on the merits or a further
12 evidentiary hearing. You know it is what it is and I
13 understand that's not a happy result for folks, but I'm
14 obligated to enforce the plan, provisions of the plan
15 consistent with the provisions of the Bankruptcy Code.

16 So I think that, you know, the later date has come
17 with respect to these claims. I'd be happy to listen to --
18 and I'd like to let the record stand, I will so order the
19 record in this regard when we're done, but to the extent
20 that Ms. Van Rooy wishes to add anything, I'm happy to hear
21 from her.

22 MS. WIENER: May I respond to Your Honor?

23 THE COURT: Sure.

24 MS. WIENER: I hear you, and I take Your Honor's
25 points. The -- I don't know that Your Honor has an

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1 evidentiary record that -- on these particular claims to
2 support the relief requested --

3 THE COURT: But why --

4 MS. WIENER: -- because initially there were
5 unsigned guarantees that were presented. That is not
6 competent in this case. Subsequently --

7 THE COURT: But if you're relying on an unsigned
8 guarantee, you're one step further removed from a claim than
9 relying on a signed guarantee.

10 MS. WIENER: No, Your Honor, it's a matter of
11 presumptions and burdens. So presumptively here, we have
12 presumptively valid claims. The burden then goes on --

13 THE COURT: You have presumptively valid
14 subordinated claim.

15 MS. WIENER: We have a presumptively valid claim
16 of some nature, subject to subordination objection if --

17 THE COURT: No, that's not correct. That's not
18 correct. Your claim is based on a subordinated guarantee.

19 MS. WIENER: Your Honor, the subordinated
20 guarantee that you're referring to is an unsigned document
21 that was presented by Lehman, which has the burden.

22 THE COURT: And what's the basis of your claim
23 that you're relying on an unsigned document? What's the --

24 MS. WIENER: They concede the liability, we just
25 disagree with respect to the nature of the liability. They

1 admit the liability, and Lehman has come forward and
2 attached to the papers they filed most recently guarantees
3 which that they're not sworn, they just have representations
4 of counsel that these are the guarantees.

5 MS. WIENER: So as a matter of housekeeping, and I
6 do appreciate this is a really complicated case, and we've
7 got to keep it moving, I think that the signed guarantees
8 that control these claims are not properly before this
9 Court.

10 THE COURT: What is the basis of your claim? What
11 is the basis of the claim?

12 MS. WIENER: The guarantees which Lehman concedes.

13 THE COURT: Okay. Then what -- but now you're
14 telling me that somehow because a guarantee is not signed,
15 that means you have an unsecured claim, a non-subordinated
16 unsecured claim.

17 MS. WIENER: I understand the consternation of it,
18 that's not the basis for why we have -- I'm sorry, why the
19 claimants have general unsecured claims. I'll let Ms. Van
20 Rooy speak for herself, but she's going to tell you
21 something that makes this less simple, which is perhaps
22 getting into the violation of the European directive in
23 connection with Lehman's sale of these securities.

24 MR. FAIL: Your Honor, if I --

25 THE COURT: Claims related to -- claims arising

1 out of the sale of securities under the Bankruptcy Code are
2 subordinated claims. So if I were to listen to that, which
3 I'm happy to do, and agree for the purposes of this hearing
4 that any or all of that occurred, the most that that would
5 give rise to is a subordinated claim.

6 Otherwise, that would enable somebody who has a
7 claim with respect to wrongdoing in connection with the sale
8 of securities to move up the capital structure and get an
9 unsecured claim, and in essence, avoid or enhance or avoid
10 the risk that they undertook by engaging in a securities
11 transaction.

12 So none of that frankly would matter. For the
13 purposes of the record, I'm happy to listen to it, but I'm
14 skeptical.

15 MS. WIENER: Your Honor, I completely agree with
16 your analysis, of course. I think if Your Honor would read
17 Ms. Van Rooy's papers they really rise to the level of
18 indicating that Lehman's got extremely unclean hands here,
19 and this is still a court of equity. I do believe that that
20 is the point that she is trying to make.

21 Now, I also add that they have been adjourning
22 these claims out for years now. This was teed up in 2011
23 and they've been fighting a war of attrition really, because
24 it's really hard to keep up with this case. There have been
25 over 30,000 docket entries since they first teed this up.

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1 And I really believe that there has been such a hardship on
2 the claimants. All of them are foreign, because it wasn't
3 okay to sell this in the United States, and I think they
4 should lose for a host of reasons here.

5 THE COURT: There's no they, let me make this
6 point. There is no they. There is no Lehman. There are
7 only all the creditors. And the creditors deserve to get
8 their fair share of the assets that are left. And to the
9 extent that I allow a claim that has no basis in law, that
10 inappropriately dilutes the recovery of those creditors
11 holding valid claims.

12 So the notion that, and I'm very aware that we're
13 in 2015, and this all happened in 2008, the estate
14 prioritizes what it deals with, it prioritizes dealing with
15 the claims that are clearly in the money if you will, it
16 can't get to everything, but the delay in and of itself, the
17 fact that we're in 2015, that's not a basis for giving
18 someone an unsecured claim.

19 I have spent countless hours with former Lehman
20 employees who lost their entire retirements because it was
21 in Lehman stock. And I've explained to them that if I were
22 going to rule based on the particular unfortunate
23 circumstances of each claimant, that simply wouldn't be
24 right. No one would want a system in which, you know, I
25 viewed the claims allowance process as listening to various

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1 supplicants and their situations. I'm sympathetic with
2 every single one of them, but I cannot make a ruling based
3 on that.

4 I'm looking at the submission that was filed at
5 Docket 22959 on November 28, 2011 by Ms. Van Rooy. And it
6 seems that the relief that she's asking for is that the
7 classification maintain its relative priority vis a vis
8 LBHI's other equity interests. And that's exactly right.
9 It is going to be subordinated to all other claims, but it
10 will come ahead of equity.

11 And in the event that somehow value appears that
12 would flow down beyond the general unsecured class, there
13 would have to be a revisiting of certain issues relating to
14 subordinated claims. But based on my knowledge, based on
15 the state of the estate, presentations that I've gotten,
16 where we are in the claims allowance process, where we are
17 in the asset recovery process, it does not appear that it's
18 going to happen.

19 With respect to your point about evidentiary, I'm
20 -- my view is that I'm only obligated to have an evidentiary
21 hearing if there's something ambiguous about the papers that
22 are presented to me in connection with the claim, and I find
23 no such ambiguity with respect to the documents underlying
24 these claims.

25 MS. WIENER: Your Honor, the -- talking about the

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1 documents, the qualitatively, whether or not they are
2 competent evidence, I believe that they were unsigned
3 documents guarantee --

4 THE COURT: Unless you can give me a piece of
5 paper that even if the guarantees are unsigned entitles you
6 to an unsecured claim, then it simply doesn't matter.

7 MS. WIENER: Then, Your Honor, I come back to the
8 law of the case, which is that Judge Peck in April of 2012
9 explained from the bench that this was complicated, and he
10 was not going to rule. He was going to take this under
11 advisement.

12 The only reason that didn't happen is because
13 Lehman then started filing a series of adjournments, because
14 they don't want this taken under advisement. I believe --

15 MR. FAIL: Your Honor, may I --

16 THE COURT: Why don't you have a seat and let Mr.
17 Fail address this.

18 MR. FAIL: If I could just interject.

19 THE COURT: Because I think it's a
20 misrepresentation of what Judge Peck was doing at the time.
21 There have been any -- there are dozens and dozens of
22 matters that at one point were heard before Judge Peck and
23 have come back to me for final resolution.

24 So one thing we're not going to do is going to,
25 you know, get Judge Peck off the bench and back on the bench

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1 so to speak. The job is mine now, and this is the
2 disposition I think is appropriate.

3 Mr. Fail, do you want to address that point --

4 MR. FAIL: Just briefly, just briefly --

5 THE COURT: -- and also the unsigned guarantee
6 point?

7 MR. FAIL: -- for the record.

8 Thank you, Your Honor, and just briefly for the
9 record because I think you've hit the substantive points.

10 So why we're here today, there's no dispute and we
11 put it in our reply that Your Honor has read, Judge Peck
12 adjourned the hearing, because he wanted to allow every
13 similarly situated creditor to be heard. He also made it
14 clear that Ms. Wiener at the time I think represented one
15 creditor, she's since -- although she hasn't filed anything
16 on the docket under the bankruptcy rules, has found two
17 other clients that she's now standing before, one other at
18 least that she's representing, but that's fine.

19 But the Judge said, she doesn't represent anybody
20 that's not represented, and he granted at a hearing other
21 people, so we're talking about the remaining bunch. Ms.
22 Wiener knows specifically, and it's clear from the docket,
23 that including Docket 27541 which is our reply to the 214th
24 objection, one of hers, we listed every single objection
25 filed by ECF and claim number. We summarized it and we gave

1 our reply.

2 So there's -- the Court, Your Honor, has read and
3 reviewed and considered every person, whether they're here
4 today, whether they were here in April of 2012, every
5 creditor who has responded on every one of the objections
6 the Court has had the opportunity, and I'm sure has read all
7 of this, and the Court can consider all of that as the
8 record. There's no dispute about that.

9 Moreover, the implication that the debtors delay
10 is an attempt to silence voices is totally uncalled for --

11 THE COURT: It's the opposite.

12 MR. FAIL: -- and unsubstantiated.

13 THE COURT: It's the opposite.

14 MR. FAIL: It's the opposite, Your Honor. And
15 indeed, we filed objections over time to some of the largest
16 claim holders that dwarf every individual to allow them to
17 speak, and as I stated in my opening presentation, and as we
18 put forth in the reply with the ECF numbers for Ms. Wiener
19 to trace, there aren't that many of them, tens of millions
20 of dollars, hundreds of millions of dollars have ultimately
21 read our pleadings and agreed.

22 With respect to the burden point, Your Honor, Your
23 Honor stated they are prima facie evidence of subordinated
24 claims, guaranteed claims. We have no other burden to
25 overcome it. Nonetheless, the Judge directed us to -- Judge

1 Peck asked us to provide informally copies of the signed
2 guarantee which we did a long time ago. If Ms. Wiener had
3 asked in advance of this hearing for us to file a
4 declaration, I certainly would have done that. But she
5 didn't and it's not required by the burdens, and it's not
6 required for any other purpose.

7 This is a sufficiency hearing and she hasn't met
8 her burden to demonstrate why their claims are entitled to
9 anything more than they're going to be given.

10 Furthermore, Ms. Wiener, herself and her client
11 are not prejudiced as she's attended every hearing and every
12 opportunity, and so has Ms. Van Rooy. As she put in her
13 pleadings, she spoke with Ms. Lutkus (ph) before the last
14 hearing and she's on the phone today and we're happy to hear
15 her, and happy to address her situation.

16 I personally spoke with her last night for 45
17 minutes at 8 p.m. last night when she called my office for
18 the first time in advance of the hearing, and I'm happy to
19 hear from her this day.

20 THE COURT: All right. Ms. Van Rooy, would you
21 like to be heard?

22 MS. ROOY: Yes, I would like to be heard.

23 THE COURT: Go ahead.

24 MS. ROOY: I'm going to read from my two papers.
25 I filed one paper (indiscernible) 2011 and the second one

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1 filed June 2012 (indiscernible) read my papers?

2 THE COURT: Yes, ma'am?

3 MS. ROOY: Because my arguments are
4 (indiscernible) because I (indiscernible) prospective and
5 (indiscernible) and I also talked (indiscernible) that like
6 the (indiscernible) they want to (indiscernible) reference
7 because (indiscernible) subordination. In those prospectus
8 they are not (indiscernible) requirements of the European
9 prospectus (indiscernible) and also not requirements of the
10 (indiscernible) and the information in the (indiscernible)
11 prospectus regarding the alleged subordination of my claim
12 is ultimate comply with requirements of the prospectus
13 directive and with the requirements of the Section 87(a),
14 the United Kingdom (indiscernible).

15 So the (indiscernible) regarding the relationship
16 (indiscernible) of my claim also in breach of the
17 contractual agreements to (indiscernible) securities. And I
18 mentioned that in my paper in trying to explain to you,
19 because (indiscernible) if you (indiscernible) prospectus
20 (indiscernible) with all parts of (indiscernible) prospectus
21 (indiscernible) is inconsistent, inaccurate and
22 (indiscernible), and pursuant (indiscernible) directives
23 (indiscernible) minority (indiscernible) prospectus.

24 And because the summary (indiscernible) together
25 with all the parts of the relationship are inconsistent,

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1 inaccurate and (indiscernible). And therefore, this
2 inconsistent, inaccurate (indiscernible) prospectus should
3 be (indiscernible) against (indiscernible) which was Lehman.

4 In addition, the (indiscernible) and information
5 by reference is (indiscernible) article (indiscernible).
6 And in addition, the directives needs to (indiscernible)
7 ensure the (indiscernible) investors. In this case, there
8 are inconsistent (indiscernible) prospective, so
9 (indiscernible) against (indiscernible) like me of
10 (indiscernible).

11 And so you know all (indiscernible) the talking
12 about the simple mention that our claims would be
13 subordinated if you look closer to the European
14 (indiscernible) prospectus and all the documents that belong
15 to it (indiscernible) to the (indiscernible) security, they
16 are against -- they are (indiscernible).

17 So (indiscernible) how do you say (indiscernible)
18 is quite difficult, difficult to talk. And I also
19 (indiscernible) that Lehman (indiscernible) of the general
20 partner and the (indiscernible). So they (indiscernible) on
21 purpose and they also used (indiscernible) they also had to
22 inform the (indiscernible) of the securities, so it's a
23 direct violation of the terms of the guarantee.

24 THE COURT: Thank you.

25 MS. ROOY: (indiscernible)

1 THE COURT: Let me give Mr. Fail an opportunity
2 briefly to respond, thank you very much.

3 MR. FAIL: Just very briefly, and thank you, Ms.
4 Van Rooy. I believe there were two general points that she
5 was making. One that Lehman caused the dissolution of the
6 GP and therefore --

7 MS. ROOY: Yes.

8 MR. FAIL: -- the entity and therefore should be
9 responsible and shouldn't be excused from liability. Again
10 to clarify for Ms. Rooy, we're not seeking to disallow the
11 claim on the basis of the termination of the guarantee, but
12 if she's asserting a separate claim and let's give all the
13 benefit of the doubt to her, if she were asserting a
14 separate claim for either that or for some violation of a
15 law, I would reserve all rights to say that that law
16 applies, that there was any violation of course, nonetheless
17 assuming arguendo she's right in her assertions, any such
18 claim would be also subordinated under U.S. bankruptcy law,
19 unfortunately for Ms. Van Rooy, leading to the same
20 practical result.

21 I would also add as a practical matter, the --
22 there was no damage or harm as a result of the consequence
23 of the dissolution of the GP or of the funding entity,
24 because that entity held -- those two entities held
25 approximately \$780 million of subordinated debt.

1 The debt is subordinated, distributions are being
2 made to senior creditors on account of that. It's being
3 accounted for. They were scheduled on the debtors books but
4 recovery would not flow through to the holders, so I
5 appreciate, and I think I understood her comments, I don't
6 think it leads to a different result today.

7 THE COURT: All right. I agree and I think the
8 most important point that Ms. Fail made and that I would
9 like to emphasize and that I also mentioned to Ms. Wiener
10 was that even assuming the allegations with respect to
11 various violations of law are correct, it's unquestionable
12 that Section 510(b) of the United States Bankruptcy Code
13 would require the subordination of any such claims.

14 And because we are in a situation in which it is
15 academic as to whether and how much those claims and what
16 the different levels of subordination would be, it's not
17 necessary to get to those issues.

18 For better or worse, eight -- going on eight years
19 out from the Lehman case, there's not a prospect of recovery
20 to anyone lower in priority than general unsecured
21 creditors. So while, of course, I have sympathy for
22 claimants who are not receiving a recovery, and I have
23 sympathy for the view that perhaps our laws were
24 insufficient to appropriately punish those who might have
25 contributed to the dissolution of Lehman and the entire

1 financial crisis in 2008, that's beyond the scope of my
2 powers, and I cannot within the scope of enforcing the
3 bankruptcy plan remedy that or offer any other comfort to
4 those who aren't receiving a recovery.

5 What I would say to you though that I've said to
6 other claimants is that the opportunity to be heard is --
7 doesn't have a dollar value, but it's a precious thing, and
8 I hope that you at least felt that you have been heard both
9 by this court and by Mr. Fail representing the estate.

10 But the objections will be sustained. All right.
11 Thank you very much for taking the time to dial in.

12 MS. ROOY: (indiscernible) that the European
13 (indiscernible) says that stipulations (indiscernible)
14 should be clear, should be (indiscernible) understand for
15 investors. And that's the point because the prospectus was
16 not (indiscernible) and also wasn't (indiscernible).

17 So you could make (indiscernible) if you read the
18 prospectus and you got to the (indiscernible) legislation it
19 was not clear to (indiscernible) --

20 THE COURT: I understand.

21 MS. ROOY: -- normal (indiscernible).

22 THE COURT: Ms. Rooy, I under --

23 MS. ROOY: (indiscernible)

24 THE COURT: Ms. Rooy --

25 MS. ROOY: (indiscernible) omitted it was not

1 clear.

2 THE COURT: Ms. Rooy --

3 MS. ROOY: Because if it was clear
4 (indiscernible).

5 THE COURT: -- I understand. Ms. Rooy? Ms. Rooy,
6 I would ask you to please hold on. I understand --

7 MS. ROOY: Yes?

8 THE COURT: -- what you're saying, I understand,
9 you made that argument before, Mr. Fail addressed it. I'm
10 going to address it one more time and then we're going to
11 have to move on.

12 Giving you the benefit of the doubt that you're
13 stating a claim with respect to infirmities in the
14 prospectus, such a claim --

15 MS. ROOY: Yes.

16 THE COURT: -- would be covered under Section
17 510(b) of the Bankruptcy Code and notwithstanding that they,
18 in your view, arise from a perspective governed by non-U.S.
19 law or otherwise.

20 So I do understand your argument and that
21 notwithstanding, the objection to the claims is going to be
22 sustained.

23 MS. ROOY: (indiscernible) then --

24 THE COURT: Ma'am, ma'am.

25 MS. ROOY: -- (indiscernible).

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1 THE COURT: Ma'am, we are -- we're going to move
2 on to the next part of the hearing. You're welcome to --

3 MS. ROOY: (indiscernible)

4 THE COURT: -- stay on the line and continue to
5 listen. Thank you so much.

6 MS. ROOY: Yes, thank you very much.

7 MR. HURST: Thank you, Your Honor. This is David
8 Hurst from Cole Schotz PC representing the Daryani Family.
9 The Daryanis have three claims totaling about \$2.1 million.

10 Your Honor, back in 2011, I guess 2011, 2012, the
11 Daryanis filed responses to the 214th and the 216th omnibus
12 objections. Those are at Docket Nos. 22507 and 27178.

13 Your Honor, I recognize these are subordinated
14 claims, so my argument is just slightly different. I'm a
15 little afraid to make it, but I'm just going to throw it out
16 there.

17 THE COURT: I'm still smiling. Not for much
18 longer but I'm still smiling.

19 MR. HURST: I'll get my argument made quickly.

20 In any case, Your Honor, I think it's clear these
21 are subordinated, that while they're subordinated debt
22 they're above common stock. My argument is, Your Honor,
23 that these actually fall above Class 11, above 12, above 11,
24 but below 10C. They fall in a place where there is no
25 class. And I don't -- you know, what the debtors are doing

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1 for purposes of convenience is to try to stick us in a class
2 where we don't belong. We're clearly not 510(b) claimants,
3 right, this is an unsecured obligation as are the guarantees
4 themselves say.

5 THE COURT: Subordinated.

6 MR. HURST: Right, it's subordinated but unsecured
7 obligation.

8 THE COURT: But it says subordinated to all other
9 subordinated obligations.

10 MR. HURST: Sure, sure.

11 THE COURT: Okay. So --

12 MR. HURST: So we're below 10C is what that means.

13 THE COURT: Right.

14 MR. HURST: Okay. But we're not 510(b) claims.

15 THE COURT: Okay.

16 MR. HURST: Those are other obligations that are
17 subordinated to a level of equity. And then there's Class
18 12, Your Honor, which is equity.

19 THE COURT: Right.

20 MR. HURST: And the debtors have acknowledged in
21 their response filed at Docket No. 27541 that these
22 subordinated guarantees did not give rise to an equity
23 interest in Lehman because they didn't.

24 THE COURT: Right.

25 MR. HURST: So we're not equity, we're not 12,

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1 we're not 11, but we're below 10C. So effectively, we're
2 Class 10D, we're just a class -- and all my client wants to
3 do is to make sure in the very unlikely situation where
4 money actually flowed down below 10C, that it flows first to
5 them before it gets --

6 THE COURT: I'll tell you what. We're going to
7 agree that you're below 10C --

8 MR. HURST: Got it, agreed, Your Honor.

9 THE COURT: -- right, and in the event that 10C
10 claims or class are paid in full --

11 MR. HURST: Yes, Your Honor.

12 THE COURT: -- you can come back and we can talk
13 about this.

14 MR. HURST: But for purposes of today -- what's
15 the order going to say?

16 MR. FAIL: Your Honor, may I just briefly try to
17 help?

18 THE COURT: Sure.

19 MR. FAIL: 10 -- Class 11 are still claims.

20 THE COURT: Right.

21 MR. FAIL: The documents are very clear. These
22 claims that we're talking about today, these 111 are parried
23 with preferred equity which are in Class 12. And I
24 understand people want to be above Class 11, but there are
25 claims in Class 11 that are entitled to be paid first, and

1 they aren't equity necessarily.

2 510(b) claims that are claims off of debt
3 securities going to 510(b), like RSU type claims --

4 THE COURT: Yes.

5 MR. FAIL: -- while sub-subject to whatever, you
6 know, litigation that's going on --

7 THE COURT: Right.

8 MR. FAIL: -- are claims about the failure to buy
9 Lehman stock are in equity.

10 THE COURT: Right.

11 MR. FAIL: But there are 510(b) based on debts
12 which is a correction for the record.

13 THE COURT: Right.

14 MR. FAIL: Happy to preserve things between 11, we
15 weren't offering 11 in the beginning, Your Honor, that was
16 an accommodation to folks that wanted to be in 11. But to
17 say that -- and that's fine, we reserve the right to
18 prioritize if it's an event, I don't think it's going to be
19 an event, and you don't either, Your Honor. But to put them
20 ahead of 11 is like a substantive difference, I don't think
21 it really --

22 THE COURT: I'm not suggesting that I put them
23 ahead of 11, I'm just suggesting that you're not ahead of
24 11, but this is -- it's entirely academic. You are -- there
25 will be no distribution beyond 10C.

1 MR. HURST: Your Honor, I respect what you're
2 saying and I've heard that Mr. Fail and he's been great to
3 explain that to me, but unfortunately my level of
4 information is not perfect. And so you try to protect your
5 client the best way you can.

6 So so long as the order says, that we're below 10C
7 and we're not necessarily grouped in with 11 or grouped in
8 with 12, I just want to preserve our right to come back in
9 the unlikely event that funds do flow down below 10C, we can
10 come back and argue, yes, we are, we're above 11. Because I
11 --

12 THE COURT: Mr. Fail?

13 MR. FAIL: I mean, there is no above 11, so we
14 could say that rights of priority within 11 and within 12,
15 you know, just practically --

16 THE COURT: Right.

17 MR. FAIL: -- that what he's asking for doesn't
18 exist. So if you want, we could say within 11 we can come
19 back, I don't think we'll ever be back, and so that would be
20 fine, Your Honor.

21 THE COURT: I mean, there is no -- it's another
22 land, there's nothing between 10C and 11.

23 MR. FAIL: I'm happy to come back and say within
24 11.

25 THE COURT: You're below 10C.

1 MR. HURST: I agree.

2 THE COURT: So at this late date, I think we're
3 not going to -- you know, modify the plan and we're talking
4 about something that it would be a tremendously happy day if
5 it had monetary value. So I think that, Mr. Fail, you can
6 draft language that makes clear that these claims are below
7 10C and in the event that funds become available for
8 distribution to claimants in classes below 10C it's without
9 prejudice to your argument to say you're entitled to such a
10 distribution. Okay. How's that?

11 MR. HURST: That sounds wonderful, Your Honor, I
12 appreciate that.

13 THE COURT: Mr. Fail, does that work for you?

14 MR. FAIL: Very well, Your Honor, absolutely,
15 we'll submit that.

16 THE COURT: All right.

17 MR. HURST: Thank you very much, Your Honor.

18 THE COURT: Who else?

19 MR. VENTURINI: Just very briefly, Your Honor. My
20 name is August Venturini for Lamita Jabbour. We filed a
21 reply under objection 215, it was Document No. 22020.

22 And I understand everything that Your Honor has
23 said, and that has been said today, and we'll just say me
24 too in terms of my claim, if we can reserve the right at
25 some point, if there is money that comes down to the level

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1 of Class 10, to then come back and discuss where we lie,
2 because we believe the guarantee is not clear as to exactly
3 where we fall.

4 THE COURT: The words subordinated to all other
5 subordinated debt is not clear? It's pretty clear.

6 MR. VENTURINI: What's not clear is what follows.
7 It says we're within pari passu with parity securities and
8 parity securities are defined as (indiscernible) securities.
9 So we're pari passu with ourself. So it doesn't really say
10 what level of subordinated that we fall under, so.

11 THE COURT: We'll count the angels on the head of
12 that pen when Mr. Fail pays all the unsecured creditors in
13 full. Did you hear that?

14 MR. VENTURINI: Did you hear that?

15 MR. FAIL: Working every day to do it, Your Honor.

16 MR. VENTURINI: Thank you, Your Honor.

17 THE COURT: Thank you. Is there anyone else --

18 MR. FAIL: Your Honor, I think that concludes --

19 THE COURT: Well, I have other folks on the phone.
20 I doubt that Mr. (indiscernible) wants to be heard on this
21 point. I have a Mr. Henderson. Are you there, Mr.
22 Henderson?

23 THE OPERATOR: This is the court call operator,
24 (indiscernible) for Mr. Henderson.

25 THE COURT: All right. Thank you.

1 Mr. Hodyl from the Hinkhouse Firm?

2 THE OPERATOR: (indiscernible)

3 THE COURT: And Mr. Miller.

4 THE OPERATOR: (indiscernible) from that attorney.

5 THE COURT: All right. Thank you, Operator.

6 All right. Mr. Fail, it looks like that concludes
7 this portion of the hearing.

8 MR. FAIL: Yes, Your Honor, we'll submit orders in
9 accordance with the Court's direction.

10 THE COURT: All right.

11 MS. WIENER: Your Honor, I'm sorry, just one
12 housekeeping matter. I was representing both Alex Wong and
13 Lionel Occhione --

14 THE COURT: Yes.

15 MS. WIENER: -- at the same time when I was before
16 Judge Peck --

17 THE COURT: Yes.

18 MS. WIENER: -- in 2012. The suggestion was made
19 that I picked up somehow a claimant subsequently to acting
20 for one claimant, and I think Mr. Fail is just confused. I
21 wanted to clarify that. I'm thrilled with the result today
22 on the record. Thank you, Your Honor.

23 THE COURT: Okay. Thank you very much.

24 MR. FAIL: Thank you very much.

25 MR. GRUHER: Your Honor?

1 THE COURT: Yes.

2 MR. GRUHER: Your Honor, on this side, and I do
3 apologize chiming in, this is Barry Gruher again.

4 Am I to understand that based on what has at least
5 been discussed today that (indiscernible) Mr. Fail's
6 preparation of the orders relative to the 215th omnibus
7 objection that that's going to be across the board to all
8 those claimants that have had their claims objected to on
9 that objection?

10 THE COURT: Yes.

11 MR. GRUHER: Okay.

12 THE COURT: If you would like Mr. Fail will send
13 you a copy of the order before he submits it to me for
14 signature.

15 MR. GRUHER: Sure. Thank you, Your Honor, and I
16 appreciate you allowing me to attend by phone.

17 THE COURT: All right. Mr. Fail, are you going to
18 depart now or are you going to stay?

19 MR. FAIL: With the Court's permission I'm happy
20 to stay, I'm happy to --

21 THE COURT: No, you can leave. If you were going
22 to depart, I just wanted to note that I think this is the
23 last time this merry band will be together in 2015, and the
24 calendar is already filling up with dates for 2016 and 2017.
25 So I just wanted to express my appreciation to all of the

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1 firms, your firm and all of the other firms that are
2 continuing to work on the case and appreciate for how you
3 help us stay organized and stay on top of things, and wish
4 everyone on behalf of us down here happy holidays and a
5 happy New Year.

6 MR. FAIL: Thank you, Your Honor, on behalf of the
7 debtors and all of their professionals, the same to you and
8 your staff for the accommodation of the time and 24-hour a
9 day and making time for us here during the day. Thank you
10 very much, happy holidays.

11 THE COURT: All right. Thank you.

12 MR. GRUHER: Thank you, Your Honor.

13 THE COURT: Okay. All right. Let me have the
14 folks on the Arch dispute back up.

15 So you're going to announce peace?

16 MR. ZIEHL: We did spend a lot of time talking,
17 Your Honor, and we're committed to trying to see if we can
18 resolve the underlying dispute, but I guess we just don't
19 have the people available today.

20 THE COURT: Okay.

21 MR. ZIEHL: But we'll be doing that soon. But
22 Arch is not accepting jurisdiction and so I think for that
23 reason and we appreciate your time in that, but I think it's
24 best that we put in the record --

25 THE COURT: Well, would you -- I can give you

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1 another option if you'd like. And that is that my view will
2 not change. If you would like to have the time to talk, you
3 can do that, and then we can reconvene telephonically, no
4 one has to come and visit if you don't want to, and I would
5 simply read what I would read now into the record.

6 I am unfortunately pressed for time at this point
7 because there's a judge's meeting --

8 MR. ZIEHL: Okay.

9 THE COURT: -- about to start, but if that's not
10 acceptable, then I'll stay and read now.

11 MR. ZIEHL: I guess I would just like to put a
12 time now because I don't want -- part of this is just --

13 THE COURT: Time.

14 MR. ZIEHL: -- time and --

15 THE COURT: Right.

16 MR. ZIEHL: -- so --

17 THE COURT: Well, cognizant of the holidays, it is
18 -- give me a suggestion, Mr. Ziehl, as to what the -- you
19 know, what the date would be for you to say deal or no deal?

20 MR. ZIEHL: Yeah, we're going to talk next week.

21 And I think we'll find out pretty quickly whether --

22 THE COURT: You think your decision-makers are
23 available --

24 MR. ZIEHL: Yeah.

25 THE COURT: -- next week?

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1 MR. SHAHINIAN: I don't know for sure, but I have
2 no reason to believe otherwise.

3 THE COURT: Okay.

4 MR. SHAHINIAN: Except for the holiday season.

5 THE COURT: Okay. Well, I can give you, for
6 example, on -- how about to give you the benefit of the
7 doubt with respect to the holidays, how about on Friday, the
8 8th at a time that would be convenient for West Coasters?

9 Or I'm around on the 28th and the 29th, I'd be happy to --

10 MR. ZIEHL: I would prefer that.

11 THE COURT: I'm getting a pained look from your
12 colleague here.

13 MR. SHAHINIAN: I'm pleased to report that I will
14 be in Belize with my family.

15 MR. ZIEHL: If it's just to hear the reading on
16 the record, I'll be happy to send him a transcript. The
17 problem is if there's going to be an appeal, there's further
18 delay, and this is supposed to be an expedited arbitration.

19 THE COURT: What about -- how about Monday,
20 January 4th? How about that, that way you don't have to --
21 I don't have to have the visual of you being in Belize
22 listening to me being in New York reading on the phone.

23 MR. SHAHINIAN: Nor will you have to
24 (indiscernible).

25 THE COURT: So what do I --

1 MR. ZIEHL: And --

2 THE COURT: We're going to figure out a time.

3 MR. ZIEHL: Don't worry about a California time,
4 Your Honor. You don't need to worry about California time.

5 THE COURT: I thought I had to worry about -- Mr.
6 Hopkins is from California.

7 MR. SHAHINIAN: Yes.

8 THE COURT: Well, how about 3 o'clock?

9 MR. ZIEHL: That's fine, Your Honor.

10 MR. SHAHINIAN: That'd be fine, Your Honor.

11 THE COURT: That would be good for California as
12 well. Is that all right, Mr. Ziehl?

13 MR. ZIEHL: That's fine, Your Honor.

14 THE COURT: All right. So 3 o'clock on January
15 4th, and I will hope that you perhaps will work it out in
16 the meantime.

17 MR. SHAHINIAN: I hope I can tell you there's no
18 need for the reading of the decision.

19 THE COURT: That would be great. As soon as you
20 know -- if you know -- well, as soon as you know up or down
21 because --

22 MR. SHAHINIAN: As soon as I know, I'll call
23 chambers.

24 THE COURT: Call Mr. O'Neal and let us know. All
25 right. Thank you so much.

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1 MR. ZIEHL: Thank you, Your Honor.

2 THE COURT: Have a good holidays.

3 MR. SHAHINIAN: Thank you.

4 (Proceedings concluded at 11:59 a.m.)

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1 CERTIFICATE

2 I, Sheila G. Orms, certify that the foregoing is a true and
3 accurate transcript from the official electronic sound
4 recording.

5 **Sheila Orms** Digitally signed by Sheila Orms
6 DN: cn=Sheila Orms, o, ou,
email=digital1@veritext.com, c=US
Date: 2015.12.18 16:03:28 -05'00'

7 SHEILA ORMS, APPROVED TRANSCRIPTIONIST

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9 DATED: December 18, 2015

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